

LAKE COUNTY PLANNING BOARD
October 14, 2015
Lake County Courthouse, Large Conference Room (Rm 316)
Meeting Minutes

MEMBERS PRESENT: Steve Rosso, John Fleming, Sigurd Jensen, Janet Camel, Rick Cothorn, Steve Shapero,

STAFF PRESENT: LaDana Hintz, Robert Costa, Jacob Feistner, Lita Fonda, Wally Congdon

Steve Rosso called the meeting to order at 7:00pm. Approval of the Sept. minutes was deferred to next month, since the minutes were not yet available.

PACIFIC PROPERTIES NW, LLC – POLICY CRITERIA COMPLIANCE (7:01 pm)

Jacob Feistner introduced Jerry Kenny of Pacific Properties NW and his agent Johna Morrison, of Carstens & Associates. He presented the staff report. (See attachments to minutes in the Oct. 2015 meeting file for staff report.)

John asked for clarification on the docks shown on attachment 4 of the staff report. Jacob further described the docks in the image. Steve R observed that attachment 2 described three 140-foot docks. Jacob clarified that originally three were proposed and it changed to two. He confirmed attachment 3 was accurate for the proposal. Steve R asked about the first bold bullet in #6 on pg. 6, which appeared to contain a contradiction. Jacob said two docks could be moved towards the center of the lot to meet that standard. LaDana added the standard wasn't met with the applicants' current plan. Steve S checked that for dock #4 on attachment 3, it showed two docks but it was really one. Jacob clarified that the current 'T' dock would be extended and it would look like the other one. It would be moved to where the black dock was shown.

Johna Morrison of Carstens and Associates spoke on behalf of the applicants. She wanted to clarify that this application for a variance was only for dockage. Some of the criteria talked about buildings, fuel stations and other things. Those weren't part of the variance. They were asking for a variance for dock length because of water depth. At 60 feet, the depth was 2 feet 9 inches. At 80 feet, it was 3 feet 1 inch. At 100 feet, it was 3 feet 5 inches deep. At 120 feet, it was 3 feet 10 inches deep. At 140 feet, it was 4 feet 2 inches deep. Realistically, the last 60 feet were the only usable part of the dock. The rest was just a walkway to get to the shore. She pointed to a drawing she brought, which showed the original 1978 dock, which was 196 feet long. She showed other docks that were over 200 feet in length because the bay was so shallow. The dock length was so you could moor a boat and walk out to it, not to moor more boats.

Johna felt like recreaters were being attacked in the staff report. This was a recreational lake. Everybody came to this area and to Montana to recreate. She referred to the Polson Heart and Soul study, which asked people why they moved here. 87% said they did so for the recreation and lakes in the area. She didn't understand why they'd want to cut down recreation in the area, which was what the staff report sounded like to her. She took that personally. She and her children spent a lot of time on Lake Mary Ronan. The kids could swim, be safe, fish and ride motorcycles. A lot changed in the last few years. A lot of the land where they used to recreate

was closed, including the whole west side of the lake. The only public recreation area was the state park. You needed to make a reservation about a year in advance for an RV space there. The options after that included Camp Tuffit, where you'd better make your reservation 6 to 8 months in advance. [Tonight's subject property] was the only option for someone to recreate at Lake Mary Ronan. Cutting down the dock space cut down the recreation opportunity. Boating wasn't the only recreation opportunity there. There was hiking, snowmobiling, ice fishing and other kinds of opportunities. She wanted them to keep that in mind as they looked at this because Montana meant recreation. If they couldn't recreate properly, they wouldn't get the tourism or to recreate themselves.

Johna noticed that [staff] wanted to cut the amount of impervious surface. The applicants were asking for a commercial marina. The docks could be pushed in 8 and 10 feet on the sides to meet the setbacks. The allowed impervious surface was 4248 square feet. Option #2 was the only option of those given that she would even consider for her client. That cut impervious surface down to 3430 square feet. She didn't think that was fair. Compared to option #2, they were asking for 20 more feet on two docks and adding 30 feet on another dock. She thought her client would be okay with removing the 27-foot dock. There wasn't much room for it. In order to even use this lake, you had to get out there. One of the original docks was 196 feet in length. They were cutting the use by going to 140 feet, not expanding the use. Today, Jerry measured the lake level. It was 2 feet 11 inches at 80 feet. She asked the Board to carefully think about that. It wasn't pointed out in the staff report. She listed other misconceptions in the staff report. It talked about having a no wake zone. Fish, Wildlife and Parks (FWP) had a 200-foot no wake zone near any shore in the state for the last 10 years. If FWP wasn't going to enforce their own rules, why was it pushed on her client? They would be willing to put out a couple of no wake zone buoys. This variance was specifically to have two docks at 140 feet. It wasn't for buildings, fuel stations or other things.

Johna turned to section B.1 on pg. 14, to clarify the section on the removal method of the docks. Jerry Kenny used a forklift to pick those out, not dragging. The docks were floated to the shoreline and then picked up with a forklift and carried to a storage building. There would be no turbidity from that. This talked about turbidity and boat motors. If you had a sufficient depth, a boat motor wouldn't dredge the bottom. If you were in 2 feet 6 inches of water and trying to make it out, there was going to be some turbidity. That was a give and take in that situation. In section B.2 about the fuel tank, she didn't believe that should be included. It wasn't what the variance was about. Fuel tanks were regulated under the lakeshore protection zones and this was a permitted use. It shouldn't be in this application because it was out of the lakeshore protection zone. Section B.2 also talked about the heavy nutrient load. She clarified that the heavy nutrient load wasn't because of the boat activity. It was because the lake was eutrophic: it had very little in terms of inlets and outlets.

She was also bothered by section C.1 about infringing on the scenic view from the neighboring properties. These were docks, not skyscrapers, and they were part of the landscape of Lake Mary Ronan or any lake in the United States. She didn't see that as something that deterred from the visual impact. Part of being on the lake was being able to recreate, enjoy, have a dock to fish from and have a boat. She would like the Board to look at that. In conclusion, she read the last

sentence of the conclusion on pg. 15 and repeated they were asking for a minor variance to extend two docks.

Janet asked if there was a season of use restriction [for motor boating] at Lake Mary Ronan. Johna replied there was not. It was used year-round. It was also used for ice fishing. Steve R asked about the maximum number of people in the RV park and cabins and so forth. Johna thought there were 28 RV spaces and maybe 7 cabins. Rick asked what that number was previously. Johna said it was the same. Some of the RV spaces were permitted in the mid-80's. To her knowledge, the number that had been on that property had been there since the 1950's. There was documentation in the '80's for how many spots and how many cabins. Steve R asked if some cabins were used by other people. Jerry said an additional 6 cabins owned by other people weren't included. For those, every two cabins shared a dock. Johna added that the 6 condominium cabins on the lake shared the same water and sewer system but were not part of this development. Jerry confirmed there were 28 RV spots and 8 cabins on Lake Mary Ronan property, and then the 6 condominium cabins. Steve R said for this waterfront usage, there would be a total of 36. He checked that there was room for 34 boat slips based on the regulations and frontage.

Janet asked if invasive aquatic species had been addressed. Johna replied that she didn't address it. Technically it wasn't part of the application. As much as she'd delved into invasive species, she still didn't understand how to control them. Invasive weeds were a huge problem in lakes of western Montana. No one had come up with a way to control them that was safe for the environment. Janet asked about an inspection station before the boats went into the water to prevent [the weeds] from coming in from another outside lake. Johna said that wouldn't hurt. Ronan had an inspection station. Rick thought this would be better handled at the state park where the volume of launches far exceeded this. Janet said she was just proposing it as an idea to consider. Rick mentioned some signage or something to keep people aware. Johna thought that would be great if a state agency would step up and do that.

Jerry said not a lot of people who stayed at Lake Mary Ronan Resort brought their boats. What they've been asked about was moorage for people who lived around there and wanted to put their boat on the lake for the summer and in Dayton Storage in the winter. When they bought the lodge, it had a 97-foot dock. They replaced it with an 80-foot dock. He passed around a picture where they could see the remnants of the old dock. (See attachment to minutes in the Oct. 2015 meeting file for picture.) Johna corrected that the old dock was 196 feet rather than 97 feet. Jerry said they met with LaDana prior to buying the lodge to learn about challenges they would meet. They met those and a whole lot more and were still here. Their idea was to make it a better place. They wanted to have the nicest dock on the lake, not the largest dock on the lake. Their vision was to have a restaurant and bar, and people could come in their boats to dine. He saw more of that than people bringing their boats. They would have fewer RV spots than allowed because of the sewer and water capacity. They'd cut way back. The bathhouse and laundry facilities were gone. They were trying to downsize the use as much as they could to make it a better place. They'd like to have what they could have to make it functional. Right now they put in an 80-foot dock. They found that wasn't very functional. Last week they had a pontoon boat out there. The pontoons were on the ground. Most of his neighbors felt they needed 5 feet of depth for boats. A lot of docks were 200 feet in length, as Johna had pointed

out. They had the same challenge. In the old days, 5 feet of depth was the norm for boats. He understood Jake's position. He was embarrassed that the Board was spending time on a Lake Mary Ronan dock as he thought the Board had better things to do. The applicants saw it as a service to everyone on the lake.

Steve R commented that the regulations tried to protect the environment and the enjoyment of the recreation facilities for a long period of time into the future. The Board did set precedents when they evaluated single applications. Those could be applied in the future and be a catalyst to change the overall development. That could make a big impact. For the Board to spend time to evaluate an important application was something they should be doing, so Jerry shouldn't worry about them taking the time to do that. He thought they needed to be careful in evaluating this to make sure the use of his property and the profitability of his business were protected. Protecting the environment and future use of Lake Mary Ronan for a lot of families and generations to come was also important.

Rick commented that he solved homicides in less time than he spent on this project. He contacted 43 different people by phone or in person over the past day and a half. The general consensus caught him flatfooted. Some people in the community were rabidly environmental and stringently concerned about the quality of the lake. One person gave him a qualified no. Everybody else was 100% in favor. The one 'no' vote he got said only one dock. That person couldn't articulate a reason for that position. He contacted everybody with the opening premise that he was on the board and wanted to reflect their positions. He didn't give a view; he wanted their view and their understanding. The comments he received caught him flatfooted with the amount, volume and intensity of support. A lot was based on Jerry and Jolene and how well received they were in what could be a contentious neighborhood. He read some of the comments. Some concerns were brought up. He was asked three times if there would be gas available on the dock, to which he replied no and that he would not support that. He was asked if there would be a light at the end of the dock. There was intense support from lakeside members and the people who lived there.

Rick was astounded that some of these people were so quick to say they wanted to do this. The Kennys had made a very favorable impression in an area where people were quick to denounce builders or those doing any type of development. Jerry Kenny had climbed that threshold and was respected throughout the community at a level Rick hadn't recognized. Rick was here clearly telling that to [the Board]. He had the names, ranks and horsepower, and all were property owners. Astoundingly, to a person, all but one supported the granting of this variance, and the one gave a qualified no, being okay with one less dock. His input as a resident and as a member of this board was that he couldn't see a stronger endorsement for granting this. [The people he spoke with] recognized Jerry Kenny as a caretaker of the environment who improved the sanitation.

Steve S referred to the removal and storage of docks in the winter. What anchored them [when in use]? Jerry described a screw in the ground with chains on both sides. It was anchored on the beach. Steve R asked if the screw anchors were in the lake bottom near the end of the dock or on the shoreline. Jerry said they were in the lake bottom, probably 15 feet further out than the dock itself. Steve R checked that there were two anchors for each dock in the water and anchors on

shore to hold that end of the dock. Jerry said the dock did have movement. If the wind was blowing from the north, it would swing one way or the other, depending on the tightness of the chains. As the lake dropped, the chain had more slack in it and the dock could move more. The stakes bothered him because if you had kids out there and someone [jumped on one], they'd get impaled. Some of the stakes had been there for probably 40 years. He thought it was a real liability. They wanted to pull them out. They hadn't because [inaudible].

Steve R said when Mike and Meg owned the property, Mike found it easier to let the ice tear the docks to pieces and rebuild them from scratch every spring. Rick said that was indicative of how sanitation ad infinitum [were handled], which were contrary to how Jerry Kenny handled things.

Steve S asked what determined the lake depth. Did it go up and down a lot? Jerry said he'd only been there since March. They saw the ice break things up. Steve S asked if the dryness this year was the reason for the lowness of the lake. Johna said this lake was mostly fed from runoff and snowmelt. A few fingerling streams went into it but nothing major. It was controlled by an earthen dam on the south side of the lake. That was controlled by removing portions of it. Irrigators removed portions of it to irrigate their properties. There was a certain level it reached where it couldn't be taken down further because there was a culvert there too. She didn't know how far down it could go but she thought it was pretty close to the lowest it could get right now. Rick said he'd be there off and on for nearly 20 years. The old timers told him it had been lower than this on a couple of occasions. This was a dry year. Someone asked him how much lower. He said another 30 feet out, according to Gene Watney and some others who had been there for a long time. He'd been curious but he didn't want to have the rancher community on him. He didn't know if there was another source for irrigation or if this was it. Sigurd mentioned they liked to keep water in the creek too, for the fisheries and the fish.

Steve R said that based on the numbers of depth in attachment 2A, 30 feet out looked like it might be 6 inches of depth. At 140 feet, it would be down to 3 feet 8 inches, which was pretty shallow. Rick said this was one of the worst times they've seen. He hoped this would be a worst case scenario.

Public comment opened: None offered. Public comment closed.

Rick emphasized the litigious and highly observant community completely supported this.

John thought the report was well done. He was impressed that the staff had proposals and alternatives. He thought they should always do this. As a board, they were advisors to the Commissioners. He got the impression from this report that they weren't here to make adjustments, although they had in the past. They were to tell the Commissioners that the Board supported this or that they did not. He asked the applicant if there were options here that would be middle ground, which would allow them to function the way they wanted to and get the docks a little closer to the standards that [Lake County] was trying to maintain. He thought staff did a very readable and creative job in putting the report together. Was there something that could be offered as a change?

Steve S asked about the square footage of the proposed variances and of the maximum allowed from the regulations. Jacob answered 4010 square feet for the proposal and 4230 from the regulations. Steve R said if they were allowed to go ahead with the two proposed 140-foot docks, moving dock 1 and keeping the 27-foot dock, the only variance they needed was for length. Jacob replied they had enough coverage.

LaDana explained they needed to look at not just if [the project] complied with the regulations, but also to consider the policy criteria in that, and the impacts. A project might comply totally with the requirements but if it didn't meet the policy criteria, you just trashed your whole reason for the regulations even though they complied. That was why they had to look at the whole use on this one. It wasn't just two docks, it was the whole property and use going on there. She understood the application was just for two docks but it was a use. It wasn't just two docks. Unfortunately, that use had never been reviewed and approved before at the County. It had to be fit into the regulations somehow. That was what they were trying to do with this staff report: to make it fit what they had there. They had to make it fit the mold that was there.

Rick said he thought about that too. He had to update—actually 44 people endorsed this project. He thought [the Board] could show this project was much better and had overall improvements from what was existing, like they did with the situation on Flathead Lake two months ago. If you looked beyond just the variance application at everything else that had been done, he would be able to say in clear conscience that while there was consideration for granting a variance here, this guy nearly went broke doing other improvements. The next person could do his part and maybe then leeway would be given for the next person. Given the overall aspect of how things were previously, he was surprised more health concerns hadn't occurred. This was now somewhere you'd take your family and not worry about getting sick.

Janet asked how many people lived around Lake Mary Ronan. Rick didn't know. Janet pointed to criteria #4 regarding creating a public nuisance. If you could say the majority of people say it wouldn't be a nuisance because they're in favor of this, you could address that criteria. Steve R confirmed with LaDana that her point was if the Board was going to look at this dock as fitting under the regulations as a commercial marina dock then it sort of said this property would be a commercial marina so before they accepted the dock, they had to look at the rest of the property and say if it was reasonable for this property to be a commercial marina.

Rick saw that. With the concern about setting precedents, he wasn't sure how you said to another applicant that this applicant had done a number of other improvements. He compared it to the dock two months ago. Although [the proposed dock] wasn't in compliance, it was clear the improvements the owners were going to make far exceeded the creosote and tire beast they had currently. Given the hygiene, sewer and other improvements in a commercial context [for today's proposal], he could tell a different applicant if they got the rest of their stuff cleaned up, their proposal probably would be looked at more favorably. He didn't know if that was the proper way to leverage something. The money expended here to get this thing habitable had also surprised everybody in the area.

Steve R thought the use of the property could meet criteria as a commercial marina. He knew that included other kinds of improvements like moving the fuel. It seemed reasonable to say this

property was a commercial marina besides being a lodge and an RV park. So in this application, using the regulations for a dock at a commercial marina would be appropriate.

LaDana asked the Board to look at #10 on pg. 11 of the staff report, which came specifically from the marina section of the lakeshore regulations. It was the policy criteria for marinas. Was there some way the Board could get this project to fit into those things and be minimal? The Board would also have to make findings to support whatever decision they made tonight. She reminded that staff went through and looked at the facts and the regulations. It was up to the Board to make their own decision and findings to support their decision. She wanted them to keep #10 in mind. It was one of the main policy criteria specifically for marinas. She confirmed for Steve R that the requirement for floating docks for Lake Mary Ronan was specifically in the regulation. Floating docks for Swan Lake and Lake Mary Ronan were the only things specific to those lakes. Steve R recalled that people from Swan Lake would like some allowance for dock length and referred to the past length allowed for Flathead Lake. LaDana said it was currently 100 feet in the regulations, with a limit of 60 feet unless you didn't have the 5-foot depth at the dock end for any of the lakes. He checked with the planners that the commercial marina dock could go out to 100 feet, without the shorter limit. LaDana referred to #7 on pg. 9. Steve S asked about the current depth at 100 feet. Steve R replied it was 3 feet 5 inches or maybe a little less. When he thought about water quality issues and potential damage to habitat, running a boat in shallow water seemed like a high impact. If they could prevent people from running boats in very shallow water, it would be one way to protect the water quality and habitat. Rick said then you would get aeration from the prop instead of dirt being stirred up.

Janet returned to the question of whether any of the options would work for the applicants. Johna said they needed 140 feet of depth. The only option that came close was #2. She relayed that Jerry said he'd be willing to get rid of the 27-foot dock, if that was some give and take. Rick said if he would reduce one dock, that got rid of the ½ vote on the no he'd received. John said they were trying to keep the boats off of the lake bottom. Was there a way to mark off an area that boats could not go beyond? LaDana asked Jerry about the option of one really long dock with equivalent coverage to the two docks in order to get out there farther. Steve S noted that then you had to pull that out in the winter. Jerry said he'd like to discuss the options with Johna. They were trying to make it a viable place for people to bring their boats. They could look at options.

Steve R said they were trying to evaluate the navigation issues. He asked how the boats approached this part of the shoreline. Would this stick out farther than the other docks such that boats would have to go around it? Jerry described that a lot of the docks were non-conforming. Rick mentioned he'd gotten that comment where people asked if the County would be coming after them. Jerry commented that the property he bought down the street had a 155-foot dock. Jacob said there were a lot of docks over 100 feet long at Lake Mary Ronan. LaDana added she didn't think they'd necessarily been permitted. Rick pointed to the fishing area at Lake Mary Ronan. Nobody skied in that area. It was almost a cultural no-wake zone because the grumpy old men were there in their 12-foot boats up in that shallow end. It was a hostile environment to anything other than 12-foot car toppers. He accidentally went too fast through there once so he knew. Steve S said a 200-foot no wake zone existed although the state didn't enforce it.

The applicant and his agent consulted for a moment. Johna noted people had been shown this plan with two 140-foot docks. She thought if they diverted from this plan, it might look like someone pulled one off. She didn't like the misconception of that. She hated to divert from the proposed plan because that changed the public opinion.

In order to get the 140-foot length, Janet suggested taking out both docks 1 and 2 and going with the 140-foot length for docks 3 and 4. They wouldn't have to worry about making dock #1 conform. Would that satisfy both parties? LaDana thought that was a great option. Johna said it would work if they could extend those two docks to 150 or 160 feet. They could still get pontoon boats in on the 100-foot dock. LaDana thought there wasn't enough water depth to do that. Johna said 80 feet was about the dead limit. Steve R returned to the navigation issue. They'd talked about boaters wanting to stay out in at least 5 feet of water. It seemed like they were looking at about 4 inches of depth for every 20 feet, which would put 5 feet of depth at 190 feet. He guessed the boats probably didn't want to be in water as shallow as those docks. This meant that the 140-foot docks would not be a problem for navigation for people traveling in front of this piece of property. Jerry said they would be in weeds. Steve agreed the aquatic plants were in shallow water where the sunlight could get down to the bottom.

Steve S asked about the longer term predication for the lake and whether it was shrinking over time. People said it was a dying lake. Johna said on the other hand, it was one of the best fisheries in western Montana. Steve R pointed out the sun was also dying. Steve S said this was a short-term solution; in 20 years they might be back about the dock. Steve R guessed it was more the condition of the climate than the lake. LaDana said it was the condition of the lake. There had been studies and people had talked with Planners and Commissioners. They appreciated that Jerry was trying to clean up. That had been a big contributor right there for a number of years. Sigurd said [Jerry] was taking it to the minimum with 140 feet.

Janet asked if they did the modified proposal of taking out dock #2, if they could leave the policy criteria. LaDana explained the Board would have to come up with meeting the policy criteria. The planners had already put how the applicants complied or didn't comply. Steve thought what [people] did would diminish water quality, but highlighted that the issue was "materially" diminishing water quality. A case could be made for the fact that by having the docks out 140 feet, the boating would be in deeper water and would stir up less of the bottom sediment. Having them out 140 feet would not materially diminish water quality.

Jerry addressed the option for eliminating docks #1 and #2. If those were eliminated, they could clean that area up for a swim area. LaDana explained that brought up other issues they probably didn't want to get into, and other permits. Jerry mentioned being a family resort. This wasn't a good lake for kids to swim in, with the weeds and old posts. He didn't know that when he bought it in winter. He thought if he gave up dock space, maybe he could make a nice swim area for kids. He'd give that up to have his docks. It was just an idea, since they asked for options. LaDana said it was an option. It brought up other permit requirements that they hadn't looked at. Steve S asked if they could agree to the dock configuration without diving into the swimming area. The Board didn't want to promise [Jerry] that would happen. They had no control over the swimming part. LaDana agreed. That required other permits and processes over which the Board had no control. Steve S said looking at it from a dock perspective, it might be a great

solution. He and LaDana agreed they couldn't guarantee Jerry anything. LaDana said the Board could make findings based on what he was proposing if he wanted to move forward with that.

Steve R returned to #1 (materially diminishing water quality) on pg. 12 and what the conclusions were. Part of this was making this a commercial marina, with more impact than just the dock length of 140 feet. He asked if they needed to include both of those evaluations while looking at the water quality issue. LaDana confirmed they needed to look at the whole commercial use. If you had a commercial marina, you obviously wanted longer docks which had more impact. Steve R thought a case could be made that the impact of the dock was minimal compared to the overall impact of having a commercial marina there. Having a commercial marina there meant there would be use and impacts. There were 36 places for families to stay every night for the summer. That wasn't necessarily new but those things were impacts. LaDana said that was why the Board needed to look at it as a total package, not just a dock.

Steve R pointed to where staff found that adding more impervious surface coverage over the water increased the amount of human activity. LaDana said if you had longer docks, you could have more boats there and more activity. Jacob commented that it brought the activity more to the shoreline too. Steve R didn't know if it would attract more boats or pack more boats into a smaller area, which would increase the impact over that small area. Rick said at some level, it might be a benefit to have a chance for people to leave their boat in the water instead of having boats going in and out, launching more often. LaDana asked what the historic use had been. Had it just been boat slips for the RV park or did they rent them to people around the lake. Someone said the neighbors had spots too. Another said it had been functioning as a commercial marina. LaDana said it had never been reviewed. To fit it under the regulations, it had to be fit into a use. Steve S noted that made the use official. Jerry thought they called it a marina when he bought it and it was on maps that way. LaDana pointed out this would make it easier down the road if Jerry wanted to sell it or make changes. Everybody would know what this thing was, as far as the regulations. Rick mentioned the 44 people he talked to weren't in favor of further development on the lake but if there was further development, the sanitation improvements and other things done by Jerry could be pointed at as much improved over what had been there. For that, they were grateful.

Steve R touched on the habitat issue. Had Jerry or the previous owners cut aquatic plants to clear room for boats to come through? Rick wasn't sure. LaDana said that required a lakeshore permit. Nobody out there had obtained one for Lake Mary Ronan, although she knew it had occurred. Jerry mentioned the guy that mowed. He pulled it out and hauled it off. The word was he came it to get a permit and couldn't. LaDana said he called but didn't show up. Rick mentioned an urban legend that the bulrushes were commercially removed in the past. LaDana said they knew vegetation had been removed but the County had never issued a permit for it. They'd heard about it after the fact. [Staff] had been so proactive [at Lake Mary Ronan] this year to try to get a handle on that and let people know there were regulations to follow. Rick said they had more support than they realized. He heard concerns about a failing septic tank somewhere in the area from a couple of people. When he asked where, so he could pass it on, the people said the County should just know about it. They did want oversight on those types of things and they did want the lake protected at all levels.

Steve R thought there were recent efforts for FWP to consider some requirements for the mowing of weeds that involved inspection of the equipment. Invasive species could travel on the mowing machine. LaDana said she was involved with that call and it was a giant concern. People who saw this machine after it came out of work areas said it was not clean. It was used to remove the curly leaf pond weed from Eagle Bend. They didn't want that spread to Lake Mary Ronan. There was no funding to go in to remove it. The state wasn't providing funding. The County tried to get grants to help some of that work but they weren't getting the funding either. If there was some way to educate people about the weeds, not cutting them and other things, that was what they were trying to do. Rick asked if costs for remediation were known. Steve R said another treatment technique was to lay heavy rubber mats on the bottom of the lake to smother the weeds without chopping them up. Mats could be laid on some of the pathways that boats traveled. Janet said those were effective but they only made the weeds go dormant. Once the mat was up, the weeds came back. Steve R agreed that you generally had to leave the mat down and you had to pull weeds that came up between the mats.

Steve R came back to the commercial marina, which meant there was extra use in that location compared to use if it were single-family residential, resulting in some impacts to the habitat for fish and wildlife. He didn't know if 140-foot docks were a significant part of that. A case could be made that having 140-foot docks instead of 100-foot docks had a small additional impact to the habitat. Sigurd thought it was a very reasonable impact. Steve R moved on to #3 on pg. 12 on interfering with navigation or other lawful recreation. They'd discussed that, if people were traveling where the water was 5 feet deep and if there were already rules about boats going at a no-wake speed 200 feet from the docks or shoreline. Things in the state rules required people to go at a no-wake speed if they were enforced. He asked the Board members if they had an issue with interference with navigation or other lawful recreation. A few answered no.

Janet asked how many users were anticipated. One possible finding was minimizing the size of the facility and number of users could reduce impacts. Was there a possibility there would be a cap on how many people would use the marina? Jerry said he didn't think they would max it out through people staying at the resort. He hoped they would max it out by people coming to dinner by boat. Rick said that was a reoccurring theme. People didn't want to put up with what had previously been an excuse for a dock. Three different lakefront people said it would be great to go to dinner via boat. Jerry said he didn't see it as residents filling the dock. He saw it as neighbors also using moorage there year-round. He also planned on having little pontoon rental boats for fishing. Steve R referred to the three docks. One was a straight dock. The other two had 12 slips apiece for 24 total. He didn't see where they would have more boats than the 34 or 35 that were allowed, especially with the shallow water.

Rick thought they'd hit all of the criteria and needed to wordsmith or formulate it. Steve R thought they'd be there a long time if they had to rewrite the findings. LaDana said those were the findings that they'd made. The Board needed to make a recommendation to the Commissioners and they needed to go through the policy criteria which happened to be those findings. Steve R thought with the previous lakeshore item, the staff got the gist of what the Board wanted to do with the findings, and the staff wordsmithed them. Was that an option here? LaDana said the Board should be coming up with their findings. These were the ones the staff

came up with. What staff wrote up might not be what the Board had in mind. They should be stating what their findings were.

Janet looked at finding #1 on pg. 12. It would be nice if they removed both docks #1 and #2. If they at least removed dock #2 and agreed to no dredging or vegetation removal, the Board could justify that there would be no additional impact to water quality with moving the docks out further. John said if you did a certain dock configuration, you would not materially diminish water quality. Janet thought they could look at the last few sentences and rewrite them to say no vegetation removal or dredging would occur. LaDana reminded that Jerry had a proposal that he might want to do. If they wrote in [no dredging or vegetation removal], would that conflict? Jerry said he wanted to look at the option of having someone come in with a machine and take it out. Part of the reason was as the milfoil and so forth sat through the summer and then died, it was almost like mulching. You reduced the depth of the lake every year that stuff sat there. Steve R asked if he'd had anyone looked at the weeds. They could be native aquatic plants that weren't invasive. LaDana mentioned she asked her caller about the plants. He identified them as milfoils. That was a red flag for her. She asked the caller if he knew what he was cutting. He answered they were native. She asked him how he knew that. He wanted the County to come in and have them tested. The County wasn't going to step in and test everybody's weed. Jerry said he could have the weeds tested. LaDana identified the other problem was that no one had done these cutting projects in Lake County. He would be back at the Planning Board. It was a major variance which was a huge project involving possibly an environmental assessment on top of that. This Board hadn't seen that before.

Rick said the more science-oriented people had concern about the vegetation. When it decomposed, it absorbed oxygen and was detrimental to the lake. He didn't have the science background to make that call. The 44 people he spoke with would want to bring a new machine that hadn't been used in other lakes. Jerry said those machines had been on the lake before without a permit. LaDana was aware the machine had been up there. It didn't have a permit and [the operator] was on the County's radar for that. Flathead County had a weed-cutting project. The cutting machine person did the project without a permit. Essentially it went to the Planning Board and was denied for various reasons. It was also denied by their County Commissioners. This was something to look seriously at. It wasn't some little project to be considered. The dredging brought up another scope that they obviously hadn't worked with. Rick pointed out another urban legend at the lake where the cattails and bulrushes that look like chives were invasive and could be hand-removed. Some people believed that. LaDana said they still needed a permit; any work in the lakeshore protection zone required a permit. If they were working in the lake, that definitely required a permit. Robert added that as of late, the Commissioners hadn't approved vegetation removal on Lake Mary Ronan except in extreme circumstances to get dock access. Rick said he would try to edify the individuals when he next saw them. LaDana offered to visit them.

John asked Jerry if there was a configuration of docks he would find acceptable so the Board could say the proposed action shall not, either during construction or utilization, materially diminish water quality. There would be some diminishing of water quality but they'd minimize that. They would reduce impacts by going to a 2-dock system or whatever. Johna highlighted

that one thing was that Jerry wasn't dragging the docks across the shoreline. He picked them up with a forklift.

Robert introduced Wally Congdon, the new County attorney, sitting behind the Board, who was here to talk about other items. Robert asked Wally for thoughts on alternative options on this project. Wally gave a couple of options. His first: don't be afraid of what they could do. They were beating themselves around the issue without confronting the monkey. The issue was about trips and disturbance. The Board had talked about it. The propellers churned up the bottom, making sediment and chopping up the weeds. The monkey of the question was how many trips per day, how much disturbance was there to the bottom and how was that related to depth. The issue was if they had two docks that were a little longer, there wasn't as much disturbance on the bottom, and if they did that, people could make the trips in and out and not churn it up. If you had 30 boats that each left once a day, that was 30 trips and that was nothing. If they could get the moorage to work for the neighbors, that would be 15 or 20 boats parked and there they'd sit. They might use them a few times a week for minimal disturbance but they were still making the trips. If you had people who rented a cabin for the weekend, they might make one trip a day. The people who came to dinner added some trips to the equation.

Wally said their idea was to go to two docks, make them 150 feet long and put in place that [boats] didn't go into the shallower water than that at those piers for the trips in and out. Moor a boat there. You didn't make trips in and out all the time if you moored those boats. They didn't cause you a lot of grief. The Board confronted the monkey, which was trips, turbidity and depth. You got a little more depth although it was longer. It had been a really good education and a great discussion. The Board members got the issue dead on. It was about recreation, water quality, habitat, turbidity and all the things the Board members were talking about. Now that they knew the issue, they just needed to write a simple set of findings that said they figured out there might be more trips than there were, there might be better trips and there was some moorage which amounted to no trips. The people who left a boat parked the whole week and just took it out on Sunday for one of the 36 slips would have 1 trip per 7 days. Those going to dinner were more likely on Friday through Sunday, when people who worked during the week were at the lake. He repeated his advice not to be afraid. They had no parameter saying it had to be "this". Their parameter was what they heard, what the public said and more importantly, what they figured out. This was not a popularity contest. The Growth Policy or the shoreline regulations didn't say people liked this guy who did good stuff so they should do [the project]. That wasn't the beauty of what [the Board] found out. People said they wanted it cleaned up, they got it cleaned up, they wanted better habitat and Johna said to keep the depth and save the plants.

The last message from Wally was to go down to the organic feed store and take a hard look at what organic livestock feed had for a source of iodine, vitamins E, A and B and the rest of the trace elements. It was always seaweed and kelp. It was worth \$800 per ton. Hay was worth \$150 per ton. If someone's new agricultural project for Lake County was dredging part of the bed out, to cut the weeds, haul them off and turn them into cattle feed, bring it on. It was cheap, local, business and solved problems. It didn't chop them up and you sold a bunch of stuff. He pointed to an aquaculture project in Whitefish where they made biodiesel from algae grown in a fishpond.

Wally said the Board had the right toolkit. He was impressed. They were the best Planning Board he'd heard in 20 years, and he'd listened to Planning Boards all over the place. They really had their hand around the idea of issues, water quality, trips, turbidity, good project improvement, and improved sanitation, all of it. They seemed almost afraid to delve into writing it. Have the staff say here's the sentence they could write and do it. If two piers that were 150 or 160 feet long handled the trips better than 3 docks that were 120 or 140 feet, you got yourself there. The two docks had less turbidity from the trips although they were longer. Longer might be better, especially if you marked the rest of it so people weren't in 2 feet 5 inches of water punching the accelerator.

Wally reiterated the Board had the right idea and was on the right track. He could defend against a lawsuit with what the Board members said and acknowledged about it. That was defensible. He wasn't afraid of defending them with 2 docks at 150 or 160 feet long, getting rid of the others and posting it for less depth. They had a good reason, good science, good experience, good rationale, good support and a staff who gave them a good bunch of reasons. If they didn't have that stuff, nobody could defend them.

Steve R asked about LaDana's point that they weren't just talking about docks. They were talking about a commercial marina, which attracted visitors and people no matter what the docks looked like. How did they justify that? Wally replied the issue was trips, disturbance and depth. When it was a commercial marina, there were more trips. More trips meant more depth was less disturbance. A longer dock was more depth, and more depth was less disturbance. They were dead on when they asked the question if they could do two piers that were longer and get rid of two docks. He liked that. He thought Janet's point was really good. If they had a 27-foot pier and someone came in with a boat that was dragging the bottom, [inaudible]. That was doing exactly what they didn't want to do. The same was true with a 100-foot dock that had boats in to 20 feet off the end. He thought the yellow line [to mark shallow areas] was a fabulous idea. Steve R thought if you had the yellow edge on the shallow part of the dock, you had to signify for canoes and kayaks only. Wally agreed. That was a creative solution. He mentioned John's discussion was great when he said they were advisory and asked if they could do something creative. The buck stopped with the three County Commissioners who made the decision. The reality was if [the Board members] were creative in their advice, what they had suddenly done was to give [the Commissioners] a reason to be creative with the decision. They could drive the bus and shouldn't be afraid of that. The more bus driving [the Board members] did, the more creative [the Commissioners] could be. The more creative all of them were, the better, more defensible project they had. Ann Brower asked if they were going to drive the bus, if she could get out from in front of it.

Steve S asked about the concern of setting precedents. Wally answered this was a different use. It was on the edge of a commercial dock. If someone else had 15 or 20 trips a day on a 100-foot dock, it made sense for them to do a 120-foot dock for 15 trips a day. Make it longer because for the right reasons in the rules, they achieved what they wanted, which was less disturbance, less turbidity, better water quality, less weed problems and the rest. The other part was if they were going to have the trips and knew people were coming, he referred to their discussion earlier about the issue of invasive species. The stuff was often on the bumper or in the holding tank.

Wally gave some additional background on that. With the yellow line on the pier, some sort of enforcement for no invasive species et cetera, and if they needed to extend it and go to 2 piers, more power to them if it accomplished their goal. The testimony that he'd heard from them, who had experience, said it did exactly that. He wasn't afraid of it. He knew that knowledge was power, and if they applied the knowledge and build the record, they wouldn't lose. Do it right and have the courage to do it. They were great.

Jerry asked if that would change with the harvesting. Wally didn't know why he didn't take a hard look at it and do that. They wouldn't be dredging it or killing it. They could harvest it, plus it solved a landfill problem for the County since they wouldn't be dumping the stuff in there. He knew Charlo dairy farmers who would probably like to turn it into silage. Robert said they'd want to examine that closely along with Wally and the Commissioners and get back to him. Jerry mentioned getting a whole comprehensive package of what was going on here. LaDana said from the start they'd wanted Jerry to put out everything he wanted to do so they could get it permitted at one time. Janet asked if the recommendation was for Jerry to come forward with a whole package to review or if the Board was still addressing findings tonight. LaDana thought Wally gave the Board a guide to come up with findings for which they had the tools here.

Steve R read the first sentence of A.1 on pg. 12. They could also say that because this lodge was 65 or more years old, these impacts had been there for a long time and the continuance of the marina would not increase the impacts. By having the docks out 160 feet and by limiting it to two docks in deeper water, they could reduce the impacts of diminishing water quality. Wally suggested adding the language about the yellow line. They were limiting the encroachments into shallower water towards the shore as well. Steve said the dock area in shallow water should be restricted to non-motorized watercraft.

LaDana asked Wally if the Board could sum this up in a few sentences for the whole thing instead of going through all of [the findings], and he affirmed. What they put at the beginning was based on the testimony regarding all of these issues at the hearing. These were their conclusions to try this requirement. LaDana noted the Commissioners would get a copy of the meeting minutes.

Steve R said if the aquatic plants were native, there might be some habitat associated with the existence of those plants. Taking them away would change the food web and the kind of fish and aquatic life that liked the area. Before the lake was altered by the removal of native plants or the addition of other plants, that should be considered. You couldn't assume getting rid of all the weeds was a good thing. As far as the vegetation, Janet suggested saying if vegetation was to be removed, there should be a plan approved by a fisheries expert at FWP.

Jerry asked if it would ever get an approval from them. Janet didn't know. If it was an invasive species, FWP might want it taken out and they might be able to recommend a method to get rid of it. If you worked with a fisheries expert, you didn't have to worry about affecting fish habitat. They would give the proper guidance that you needed to follow. LaDana asked if this was part of the project at this point. Jerry said they were looking at down the line. LaDana suggested they come back with that and deal with that part later. Steve R explained that he brought it up because of the mention of vegetation and nutrients in #2. LaDana replied that usually when you

had increased use, they wanted to come in and cut the weeds and so forth, so that was why that was included. Robert suggested including that weeds may provide some habitat and removal would take away that habitat. Any removal should be minimal or as advised by the proper authorities. Steve R thought they needed to look at the whole package. They might be approving things to remove the plants in some areas but a wholesale removal across the whole lake would not be the right thing to do. Wally mentioned you might have more plants than you did 30 years ago. The amount of nitrogen and phosphorus from the leaking septic tanks was an issue.

Steve R checked with LaDana about what staff would like the Board to provide as far as language. She suggested a couple of sentences to sum up what they were thinking. Jacob recalled last time the Board did this, they acknowledged some impact and then said however.... By allowing longer docks and fewer of them, and by having a no boat zone, they could reduce the impacts. Last time, the Board addressed every one of the findings with a blanket statement they added to each finding. They acknowledged some impact and took the rest away and added a statement to the end of each one that said something like that.

Janet crafted a motion mentioning 150 feet for dock length. Jerry asked about the 160-foot dock length. Rick said he would second it with the 160 feet. Janet checked that people were okay with the 160-foot length. She asked if it would cause a public nuisance or interfere with navigation. LaDana thought they might need that length for the other wings. Jerry said the current dock was 197 feet. He relayed an interesting thought from Johna about the boat ramp, where motorized boats would launch. That would be a designated area too. Steve R said if the water was 2 feet deep, they'd have the motor tipped up. They wouldn't be running the motor. Janet clarified this would be no use of the motor in the shallow area and Steve R agreed that was the idea. Jerry could see where the [truck] bumper would be totally submerged. Janet said if they didn't think it would interfere with navigation, [the 160 feet] was what she proposed. Jacob verified with Jerry that there would be 4 wings off of each side.

Motion made by Janet Camel, and seconded by Rick Cothorn, that the historic impacts to the criteria listed associated with activities from a marina could materially diminish each of those resources. However, by limiting the number of trips, reducing the number of docks, lengthening the two approved docks and by having a no motor zone in the shallow areas, this would minimize the impacts to these resources. Therefore the Board recommends that the proposal be limited to two docks of 160 feet in length with clearly marked no motor use boat zones in the shallow areas. Motion carried, all in favor.

DISCUSSION ITEMS (9:10 pm)

Wally described that he would give a quick vocabulary lesson prior to a 10 minute break. He gave the Board 7 p-words to remember in a phrase: Proper prior planning prevents piss poor performance. If you were in the business of planning stuff, protecting it or defending what you did well, there were 4 p-words to know. It was an easy thing to prevent harm, to preserve something or to protect something. It was really hard to have a reason to promote something. In land use, it was hard to make defensible findings or things that promoted something, when you weren't preventing, preserving or protecting. When the Board worded something, they could take a hard look at those 4 words. The irony of tonight's project was they had one where the

finding they could make at the end said in many ways having two longer docks was promoting better water quality than was available historically through the last 60 years. By moving it deeper, they were promoting less sedimentation and whatever else. On a lucky occasion now and then in a land-use project, you got to use the 4th p-word that you weren't supposed to use very often. For the purposes of them being a planning board, that was the best tool he could have asked for to give them a good education about what they could do. Generally they wouldn't get in trouble if they preserved, prevented and protected. On a rare occasion, you could accomplish all 4 p's at one time, and this was one of them. He told them this was well done as a Board.

A ten-minute break was taken. (9:14 pm)

Discussion recommenced at 9:24 pm.

Wally said for the first time in a long time, or maybe ever, the Commissioners were commenting on a conservation easement. Ann noted for full disclosure that John Fleming was here. Wally explained that state law said commissioners had 30 days to do comment on proposed conservation easements. He talked about the simple things in the comments, like working with Fish & Game and Tribal government for wildlife. The easement holder was required to set it not just to lock it up but to work with other people for T and E [threatened and endangered] species. There was a huge repercussion on how the whole thing worked. The language proposed was language that Montana Land Reliance didn't like much but this was where the rubber met the road. He went with it to the Commissioners and Planning staff, who added some cool stuff. It was important for an easement to say they [approved] of the opportunity for wildlife to use the property because they wanted fences that didn't harm deer, that bears could be there and so forth. By the same token, if you were going to say that agriculture mattered, then you provided the same opportunity for agriculture. If you didn't farm it yourself, you made the same opportunity for ag production available to somebody else at market price for agriculture. The issues for those resource amenity values on an easement were things that talked about opportunity. Based on models of other counties, they identified values as very important so they could ensure that the opportunity was there. It wasn't a regulation or zoning. It was a condition on a deed. Conservation easements were an old thing. When you looked at the history of it, the Queen's conservation forests were two forests in particular in Great Britain that were still there after 1300 years. Conservation easements needed a tax deduction as an incentive and a 10-year write-off period, and they got it.

Wally continued that as a planning board, a project they got to take on was a discussion about redoing the growth policy and updating it. Simple things that went into the growth policy were things like policy regarding conservation easement ground, open space ground, agricultural land as open space, wildlife habitat and economic development. The update should get done for a couple reasons, including the ability to defend policies like the Density Map and Regulations (DMR). He could not defend it as it was written based on what it did and what was in the Growth Policy as this point. The DMR said it's zoning under the zoning regulations but they weren't calling it that. The regulations said they wanted to encourage meeting with Ronan, Mission and Polson to encourage infrastructure to be available for development closer to town in the DMR. It didn't happen. They never got a contract sewer ordinance, water service or fire

service from those municipalities to contract for outside city limits. More importantly, if someone put in a sewer pipe to a development, the rest of the people along the way had to rebate to that person the pro-rata portion of the cost of putting in the sewer main if they developed in the next 10 years. This got to the very thing the DMR wanted but no one had done it. The DMR said they intended to do this to accomplish this goal. The problem was the goal was set out to accomplish but it was a hard thing to defend doing it when the stuff that was supposed to be done to make it a workable document [hadn't] got done in that regard. The idea was good but they needed the tool box to be bigger. Once the tool box was figured out, then if they wanted to keep it as a regulation rather than a guide, they would have the tool box to defend it. If they didn't implement the rest of the local tool box, he couldn't defend it. The group had promoted but didn't protect, prevent or preserve.

Wally said as they did a new growth policy draft, they could put the DMR information in part of the Growth Policy as the reason why they did it. Put it in that context, they didn't just say they were going to do it; they actually did it. 'Get 'er done' was what it took to make a defensible product. He knew both sides of the planning/legal equation for what they had to do. If they wanted to have zoning in the future, call it that. People shouldn't be afraid of the z-word. A lot of it was they didn't understand. They didn't have the education or knowledge to know that zoning wasn't really a bad thing. [The County] needed the tool kit to do it the right way. They didn't get the tool kit done. Contact sewer ordinances were easy and they could get them done. A simple thing that said they encouraged rural clusters so they could actually have community services, but rural clusters didn't give community services. If you clustered, you could maybe put in a new community water system. He referred to Missoula, O'Brien Creek, a fire and a classic case where the infrastructure needed was right there with the easement but the fire department didn't know and forgot. Janet suggested a way to address that would be to have a GIS map developed for the fire departments as new wells or systems were created. Wally said Beaverhead County had 10 rural facilities for water for the fire department when he worked with them. He asked them to take the fire trucks out and test the wells. They could only hook the fire trucks to one out of the ten. Four of the wells were dry and 5 of the other 6 had incompatible fittings. He reminded that proper prior planning prevented piss-poor performance.

Wally said they needed to have the follow-through for the things they talked about doing. As a planning board, the best thing they could do was make a clear statement about monitoring and a really quick statement about double-checking it. He thought Janet's comment about a map was good. The map told you the well was there. It didn't tell you that the hook-up on the well would hook to your fire truck. Swearing at fittings that didn't work didn't get the truck full of water. For the Board, the monitoring part was really important.

Wally gave the Board some notes for taking on the Growth Policy, which would move them ahead a lot. One was to play the end game. As a county, they had the ability to drive the federal bus (the BLM, the Fish & Wildlife Service, the Forest Service, the Bonneville Power Administration, the Corps of Engineers and the USDA). The problem was they never bothered to show up for the game before. It said that all federal agencies shall prepare an environmental impact statement (EIS) or environmental assessment (EA) for every recommendation or reported proposals for legislation or other major federal actions significantly affecting the quality of the human environment. Such EIS or EA shall include alternatives, and copies of comments of state

and local governments MUST accompany the EIS or EA throughout the review process. If [a county] showed up for the ballgame, their comments went for the ride. The best part of the equation was the language no one remembered: Environmental impact statements MUST discuss any inconsistency of a proposed plan with any approved state or local plan and office, whether or not federally sanctioned. Where inconsistencies exist, the EIS should describe the extent to which the agency would reconcile the proposed action to the local plan or law. Wally cited [cit.40 code of federal regulations section 1506.2]. If they had a growth policy that looked at simple things like economic development, sustainable timber harvest, [inaudible] like motorized recreation, hiking, wilderness area, wildlife habitat, grazing—if their growth policy talked about it, then it was part of their plan. The federal government had to discuss those inconsistencies and talk about what it was going to do to make its plan consistent to their plan to the extent possible. [The county] drove the bus.

Wally described projects in CA, NV and WY where the respective counties said they had done this. When he was with Beaverhead County, he asked the BLM and Forest Service for the memorandums of understanding (MOU) where this was done. The response was that there was a great discussion but there wasn't a MOU, so Beaverhead County wrote the MOU for the whole country, with the Forest Service, US Fish & Wildlife Service and the BLM. Since 1987, only one resource management plan for the Bureau of Land Management went through the entire planning process and final record of decision without being appealed or litigated.

Simply put, the Planning Board drove the bus. Whatever they wanted to accomplish, they needed to take the information and gather it locally like they did tonight. Tonight, they had the right tools perfectly in the box. They had the right information, facts and data to make a great decision and justify it. If they did that for a growth policy it would work fabulously.

Wally remarked that democracy was not a spectator sport. He talked about how to get people to show up. Beaverhead County had 138 citizens show up. Everybody had something they knew the most about. If each Planning Board member took a topic and 4 or 5 citizens from the community helped write those 2 paragraphs, they had a growth policy written. The Planning staff then had to proofread it, facilitate it, get feedback from the people who wrote it and get more information. The people who wrote the growth policy were not lawyers, commissioners, planning board or planning staff. The people who wrote it were the people the buck stopped with: John Q. Public. It worked great. There were 128 people who wrote it. He described the wide range of committees they had. He thought they needed to do this. It would help the shoreline regulations, the DMR, subdivision regulations, comments on conservation easements and a lot of other stuff.

Wally shared a favorite tidbit: only one state in America had a constitution that mentioned agriculture, the fact that you had a right to a clean and healthful environment and that you had an obligation to help keep it that way. That was Montana. Montana recognized a long commitment to agriculture. There was both a Dept. of Agriculture and a Dept. of Livestock. Montana also adopted the standard statute that said if you wanted to make sure that agriculture wasn't considered a nuisance, counties had the ability to adopt a right-to-farm ordinance. He'd written this for the counties that had it. He ranched for a living, taught ag law for a law school and taught natural resources environmental law for undergraduate school. The counties did a really

good job of it. It was desirable to educate the public and visitors. Part of the right to farm requirement was education. It's on the face of subdivision plats. Realtors had to hand out brochures about agriculture. Agriculture had noise, lights and dust. Education meant that agriculture was not a nuisance. Expect it. It was why they were here. They wanted to encourage and try to preserve agricultural opportunities. The classic agricultural opportunity tonight in western Montana was harvesting kelp in Lake Mary Ronan to sell as cattle feed. That was alternative agriculture. He gave other examples of alternative agriculture for happier cows. It was a commissioner commitment to minimize conflicts between the ag and non-ag land users.

Wally described the past setting of western Montana. The whole community had changed and that was what the Growth Policy had to recommend. The [conservation] easement was there for a reason. It was harder to do ag now, or to look after bears, wildlife, fisheries and the rest because there were too many people who had a different use for it. People moved here because the bears were here, so [they should] figure out how to deal with it. That was the purpose. It was an opportunity to find what agriculture was. There was no federal definition. He gave a definition of agriculture as the practice, process, procedure, science and art of raising something for use by society or people. He gave an example with camas. It was food for a lot of people for thousands of years, but now very few knew the art of harvesting it. It was a dying art that shouldn't be dying. That was the purpose to right to farm. To him, it was a policy statement that said ag was still the biggest business in Montana. It was a statement that said we supported that important part of who we are, what we are and how we do. For the first time, agriculture got the message they were not alone. The Growth Policy should talk about it. He gave examples of forestry and tree-related processes in agriculture, including sewage treatment using trees in Missoula. In addition to being something to take a hard look at as a matter of direction and policy, right to farm was a great piece of ground work to do before doing the Growth Policy.

He repeated that in 30 some years, he'd never heard a Planning Board do it better than this board did it tonight. They had the right things. It was interesting to watch them be almost afraid of doing it. Don't be afraid. They clearly had the skill set and their act together. He told them to just do it to it. The sky was the limit. They had no parameters like this as long as they preserved, protected and prevented. Promoting wasn't such a great thing. They could do it a little bit as long as they were basically saving, protecting and preventing harm to stuff. They were great. They had it. He thought the Growth Policy would be fun for them.

Janet asked if the DMR could stay until they worked on the Growth Policy. Wally thought they should probably attach them to the Growth Policy right now and not try to enforce them as a rule. He gave some background and history. Some states were very rigid in their comprehensive plans, where what you did had to follow it exactly. For other states, it didn't matter much. Montana was of a school where to do things like zoning or subdivision rules, [growth policies] weren't totally binding but there had to be substantial compliance or they had to be consistent with or consider or implement the growth policy to some degree. The circumstance was the DMR was zoning. The problem was they had a list of tasks to accomplish to facilitate this working. They hadn't done that. He thought they could do a growth policy in about 8 months. They could use the DMR in the meantime as a guiding mechanism to follow to give direction on subdivision and so forth, and not to implement it strictly as a way to do it. It would be a hard one to defend if the wrong project came in the door. The reason to do the Growth Policy now was it

would let them do density mapping and incentives for local growth better. Polson was working on its version of a community plan for the Polson Development Code. He mentioned encouraging extension of services. [The County] could try to get started on getting that stuff done as soon as possible.

Janet explained her concern if a project came in, in a 1 per 40-acre density area and got approved at 1 per 5-acre, for instance. The Tribes had a lot of investment in the 1 per 40 density areas, where the Tribe purchased land and set it aside for wildlife habitat. That would devalue the Tribes' property, which could be considered a taking. Wally said it didn't devalue it. Janet said it would devalue the fish and wildlife habitat and gave examples of how additional homes would have a negative impact on adjacent lands set aside for fish and wildlife habitat. Wally said the conservation easement language talked about that. If there was a development in the neighborhood, the holder of the conservation land was changed as outlined in a paragraph he offered to read. Janet said in the interim, the Tribe couldn't get conservation easements on every piece of fee property next to Tribal land. Wally said they didn't need an easement. The law said the owner will provide Lake County with comment and information that [inaudible] development and growth on the properties in the vicinity would help the County minimize adverse effects on the subject premises if development is proposed or occurs on nearby lands. What they could do was mitigate the impacts, which helped a bunch. Density around it devalued its value potentially as conservation lands only. It didn't devalue its value as real estate. He gave some history on subdivision law in Montana. In 1973, subdivisions were considered 10 acres or less. In 1975, the exemption acreage was upped to 20 acres. It was upped to 160 acres in 1995. He talked about what happened. If you had a growth policy written, and the ordinance gave you enough horsepower to mitigate with design standards, design review standards, etcetera, you could do it. Otherwise you couldn't. What did it was to mitigate what they could do with subdivision regulations that said there was a building envelope, a fencing requirement, a light requirement, standards regarding dogs, pets, wolves and everything. It was a design issue, not a zoning issue.

Robert said it didn't have to be just subdivision regulations. It could be zoning. Wally agreed. The density rules worked if you had a reason to tie it to that. They needed the connecting link. Janet said the DMR were passed as zoning regulations and the public wanted them. How did they keep them and make them better without vacating them? Wally said they hoped if they kept them that they didn't get sued in the meantime. Janet said it had been 10 years. Wally said no one subdivided after 2008 while the economy was dead. They had a vacancy [on subdivisions] for a while. Janet asked what if the Tribes owned the majority of the land in those 1 per 40-acre zones. Wally said that was zoning and it was subject to change. That was the problem they had. Janet asked if the Tribes had some sovereignty interest in those zoning areas if they owned the majority of the land. Wally replied no. The Tribes wouldn't have sovereignty in the zoning because the zoning was a regulation from the County. If the Tribes had it in trust, it wasn't subject to it anyway. Janet asked about if the Tribes wanted to make sure there were regulations in place to protect those sovereign lands. Wally said democracy wasn't a spectator sport. Show up for the hearing. Zoning was subject to change. If it was going to change, the Tribes could show up and participate in the system. Janet asked what they could do in the short term to make the DMR more defensible. Wally said rewrite the Growth Policy.

Janet mentioned items the Growth Policy talked about protecting. That was what the DMR did. Wally said it did not. What it did was to say they had the regulations for water, sewer, fire protection, stormwater drainage and so forth. If they provided the commodity, the water hookups, that protected water quality, he could defend that. He gave other examples. The problem was they talked about doing this and did not. The tool box wasn't there.

Janet said her understanding was the reason there were growth areas established was that those were based on the sewer and water district boundaries and adding a quarter mile around those boundaries. Most developers who were putting in a subdivision at a higher density could afford the extension of a quarter mile to the sewer and water district and hook up. The higher density would be allowed by the Planning office if they could show that they could hook up if there was capacity in those sewer and water districts. If there wasn't capacity, they couldn't have the higher density. Wally said that was the problem: if there was no capacity, you couldn't have the higher density. Janet said they'd have to develop at a reasonable rate based on DEQ standards. Wally said what happened was they'd build 1 house per acre to meet DEQ standards instead of 6 houses per acre if they had the sewer and water. Now six times more land were eaten up than the other way.

Janet said they looked at brownwater vulnerability and mapped the areas that were most vulnerable to aquifer contamination and lowered the density to 1 per 10 acres in those areas. Wally said that didn't end up in the text portion that he got. Janet said it should have been. Wally said he couldn't use an intention in court. Janet asked if they could add an explanatory clause. Wally replied you had to put it in the Growth Policy to justify it. You had to have the factual record in the Growth Policy to justify why they did it. Without the 'why', he couldn't make it defensible. Janet asked if the Growth Policy had to be that specific to say they were trying to protect water quality. Wally said it should be specific enough to say that what they were doing was the most restrictive tool to accomplish that, which was not a ground water closure but the density map for these densities with these improvements. [The DMR] mentioned 3 specific sewer systems: Ronan, Polson and Mission. There was no text that talked about the sewer district. Janet said they specifically used those boundaries as mapping guides in GIS. Wally said the problem was that this didn't come up in the text.

Janet asked about amending the text. Wally said they could amend it and say they had other information. This was better than what they had. They could get the reasons and rationale and get it compiled. Janet said that was what she would like to see. She wanted to save what they could, based on water quality protection, wildlife habitat and prime farmland protection. They had prime farmland soils that had been mapped by NRCS. Wally said being prime farmland didn't mean it was agriculture and mentioned allotment of water and the rest. Janet said they knew if it was in an irrigation district. She repeated that she'd like to see them try to strengthen the language. Wally thought if the Planning Board wanted to do the whole Growth Policy now that was the Planning Board decision. It was the mechanism to get there. The way many federal and state groups screwed it up was the first budget cut was monitoring. The stuff that was supposed to be done didn't get done because nobody monitored. It was fixable. Get the information, the facts and data in there and tie the two together so the zoning regulations were a defensible commodity or do it the other route and make the subdivision regulations better and use density and subdivision regulations together to accomplish it.

Wally said the zoning regulation in the form of the DMR didn't give a building envelope, a fence setback, shielded lighting or overpopulation of animals being talked about. To preserve the thing they were talking about, that was what they needed. A lot of the commodity items they needed to accomplish 'rural' better didn't do it with just the zoning because they didn't write it as zoning. They wrote it as just density. He would do it differently, with subdivision rules. It got you to the same place. Janet said she hated to see the loss of the DMR after it was so difficult to get it passed and get that zoning established. She thought they could amend the regulations based on the Growth Policy. Wally said they needed to amend the Growth Policy to put the right information into it. It was doable to do it that way. Janet referred to the natural resources chapter of the Growth Policy. They had goals and objectives in the back of that chapter. Maybe those could be tightened or clarified.

Wally said the question was how density itself resulted in that benefit. That was the part that was hard to say. Janet said the Tribe's wildlife staff could write something up. The Tribes had mapping and background information they could provide. Wally said they could get it done that way if they wanted to save that part or they could do it right and make the other requirements of zoning such as setback requirements, height restrictions, lights and the other usual stuff. Janet gave the example of setbacks from farmlands for subdivisions. She asked that Wally guide them through the key steps to keep from being sued based on the natural resource issues. Wally said as a Planning Board, they needed to decide and tell the Commissioners where they needed to go. They needed to get everybody who had an expertise in whatever in the county to step up and go to work on their part. It wasn't a wildlife biologist who knew as much as Rick's 42 neighbors about what was in the bottom of Lake Mary Ronan. That was the record that mattered. It was invaluable information. Booksmart wasn't necessarily how it was but it helped.

Steve asked if they were required to have public hearings to adopt a policy, if the County decided to set the DMR aside for now and work on the Growth Policy and integrate the stuff that was in the DMR into the Growth Policy. Wally thought it was written as an ordinance resolution rather than a comprehensive plan. It probably could be set aside under the process of setting zoning aside, which was a public hearing. Then the zoning went away. They could incorporate it as a guiding document until they got the Growth Policy done. Steve asked if they had a public hearing to discuss setting aside the DMR and the public showed up and said they didn't want to set it aside, what did they do then? Wally said it was the Planning Board's call and the Commissioner's call. Steve said if everyone wanted to keep the DMR, maybe they couldn't set it aside; maybe they needed to try to fix the Growth Policy, the DMR and those kinds of things. If they needed to have a public hearing before they could set that aside, the result of that public hearing would [give direction]. Wally said the problem was the DMR was not a defensible project at this point in time. Steve thought as a Planning Board, they needed to go back to before the Density Map and say the reasons they wanted the density [at a particular level] was because of the wildlife protection and the other things. They would be okay if they based their decision on that. Wally said they could. The best thing was they had paid attention to what he said tonight. They were willing to have the courage to look at the information, get the facts and make a decision. They weren't look at A reason. It wasn't a public opinion poll. There were other things that mattered. When they talked about all of the other reasons, they had this. They were right for how to go about doing it as long as the Growth Policy had language about the other

stuff they were considering. That meant they were out of the box and no longer had this issue. He was glad they had this discussion.

Janet asked which pieces of the text should be stricken so the County wouldn't be sued at this point. Wally said he'd get the comments to her. The bigger problem was what they said they'd do that they didn't do to make it work. They never made the sewer and water available so they didn't give people an option.

Wally read from 40 CFR, section 1508, which said mitigation included avoiding the impact altogether, limiting the degree of the impact, repairing, rehabilitating or restoring the affected environment, reducing the impact by preservation opportunities or compensating for the impact by replacing or providing substitute resources or environment. By not having the infrastructure, [Lake County] didn't provide the mitigation resource they said they would provide. That was the problem. They could strike the language or put the other language in the Growth Policy but the best alternative was really to bring it on and do it right, and get the whole thing together in the first place and put the other language in the DMR with setbacks, density rules, asphalt, stormwater and whatever they wanted. Janet said that by vacating the DMR, she didn't think they were going to get it again. It was a big fight to get it put in place. People were afraid of zoning. Wally said as a Board, they needed to figure out whether or not they wanted to keep that tool in the tool box if zoning was that unpopular. That was the other question. Janet said to protect the values that the County said they wanted to protect in the Growth Policy, they needed this. John also thought they should try to fix it and keep it. Steve said he wanted to keep the reasons why it was there. What he didn't know was that they couldn't do that the other route. He needed to learn about that. Wally said he would do a little more reading on how to get rid of it or not get rid of it or amend it. This was Chapter 47 zoning, which he hadn't worked with for a while.

Janet asked about the lawsuits that were happening before the DMR, where people felt they were given an arbitrary decision. LaDana said she looked through what had been denied and approved. The Planning Board was basing their decision on a 20-acre policy that you'd only have farmland in the south part of the County. A lot of the developments that were proposed and being denied were right next to things that were already split up. Many were 2 or 3-lot subdivisions, where someone wanted to make a 10-acre lot more manageable. That was why the County got sued. John said people with projects felt like they were getting blindsided because they had no idea that the Board was not allowing things smaller than 20 acres in the south end of the County. It was up front with the DMR. That was the part he knew. He could tell them the land that was proposed for subdivision and what the Board denied.

Wally repeated that democracy was not a spectator sport and the Planning Board wasn't a lazy man's job. The difference they would make would last the next 20 years. He gave more history and examples. Rick mentioned with regards to democracy, he offered each of the people he contacted an opportunity to be on the Planning Board.

Ann Brower suggested they open for public comment. Steve did so. None were offered.

OTHER BUSINESS (10:28 pm)

Lita mentioned the usual process for expiring members would be happening.

Ann thanked the Board for their work, efforts and service to the public. It was very much appreciated. She hoped they were excited. [The County] was looking at making some positive things that were a benefit and good things, to utilize and keep the pieces that were so important.

Steve asked about the end of month deadline. Ann said that was concrete because they had to get moving, and in order to get started, they had to hear from the Board. The group discussed this. Steve thought they couldn't make a decision to vacate the DMR without a public hearing. Wally said it was a Commissioner decision. The Planning Board's was a recommendation. To repeal it, the Commissioners had to do a public hearing, unless it was protested. The group discussed this further.

Motion made by Janet Camel, and seconded by John Fleming, to recommend that they make changes to the Growth Policy and the Density Map & Regulations that would make them defensible and that they have some time to work on that so they could have specific recommendations to the Commissioners by the end of December rather than vacating the Density Map & Regulations.

Steve thought that was a fairly reasonable proposal. He thought they needed to have extra meetings and specific topics to talk about, as they started to do in August but didn't follow through on. LaDana noted they had been waiting for the attorney to give them guidance. The document wasn't defensible. He'd given them an option to put it in the Growth Policy for right now. They weren't scrapping it. They needed something they could function with. Further discussion ensued around a possible public hearing and the Oct. deadline to get the Commissioners a recommendation. Public meetings were further discussed.

Motion carried, 4 in favor (Steve Rosso, John Fleming, Janet Camel, Steve Shapero) and two abstentions (Sigurd Jensen, Rick Cothorn).

Wally directed the Board to read the document given to the Board entitled 'Due Process: The Elements of Fair Play.' It was the best summary of due process that he'd seen.

Motion by general acclamation to adjourn. Motion carried, all in favor. Meeting adjourned at 10:42 pm.